

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of Todd Eggerling,	)	Application No. FC-1304
Martell, Nebraska,	)	
	)	
Complainant,	)	
vs.	)	COMPLAINT DENIED
	)	
ALLTEL Communications,	)	
Lincoln, Nebraska,	)	
	)	
Defendant.	)	Entered: January 22, 2003

APPEARANCES:

For the Complainant:

Tom Zimmerman  
4701 Van Dorn  
PO Box 6096  
Lincoln, Nebraska

For the Defendant:

James Overcash  
301 South 13th Street  
Suite 500  
Lincoln, Nebraska

For the Commission Staff:

Shana Knutson  
300 The Atrium Building  
1200 N Street  
Lincoln, Nebraska

BY THE COMMISSION:

By Complaint filed September 23, 2002, Todd Eggerling seeks to have his telephone pedestal relocated by ALLTEL at ALLTEL's cost. An Answer to the Complaint was timely filed on October 15, 2002. A hearing was held on November 26, 2002, in the Commission Library with appearances as shown above.

The Complainant presented one witness who testified as follows: Mr. Todd Eggerling is involved in agriculture production including crops and livestock. He uses family property in the Milford and Sprague areas to run his operations. The Sprague property is the subject property in his Complaint. Mr. Eggerling was in the process of widening his driveway when he came up against an ALLTEL pedestal. Before he went further, he contacted ALLTEL to see if it could be moved. ALLTEL told him

that if the pedestal was to be moved, it would be moved at his expense. He then filed a complaint with the Commission.

Exhibits 2 through 9 and 10 through 14 were admitted into evidence to depict the location of the pedestal relative to the property. The driveway ingress to his farm operations is a narrow passageway with deep drop-offs on each side. There are two houses on the subject property which are currently both rented. The Complainant uses the driveway purely for the purposes of going in and out, in relation to the operations of his farm. He makes three to four trips a day with feed trucks, feeding equipment, livestock equipment and fertilizer trucks.

The Complainant testified that he has not had an accident due to the driveway condition, however, he was concerned about the safety of the entrance which led him to the decision to widen the driveway. He testified that he cannot widen the driveway to the other side because the lay of the ground is too steep. He would also have to excavate into the hill and change the slope of the land to divert the ditch water. Now that he has filled the one side of his driveway with dirt, he is further concerned that someone will hit the pedestal and that he would be liable for such an accident. He has invested about \$500 to \$600 so far in attempting to widen his driveway. The Complainant was told by an ALLTEL representative that a service truck had an incident trying to pull into his driveway.

Upon cross-examination, Mr. Eggerling stated that he believed that the pedestal was in the public right-of-way. He purchased the subject property in 1998. When he contacted ALLTEL, ALLTEL agreed to move the pedestal, but stated that the project would be billed to Mr. Eggerling. The initial cost quote was \$1,326.00.

Upon further questioning, Mr. Eggerling stated that the driveway has been a problem since he purchased the land in 1998. He has intensified the use of the property within the last five years. He believes the placement of the pedestal was a bad engineering decision that did not account for future use of the property. The previous property owners operated a smaller livestock operation on the subject property.

After the Complainant rested, ALLTEL moved for a directed verdict. The motion was denied by the Hearing Officer. ALLTEL then presented one witness, Mr. Alan Schroeder, in its defense.

Mr. Schroeder is the manager of outside plant engineering for ALLTEL. He was responsible for preparing the original cost

estimate and also took the photos of the subject property.<sup>1</sup> Mr. Schroeder further testified that he visited the subject property and has reviewed the ALLTEL documents in regards to the pedestal. In his opinion, the pedestal is located in the public right-of-way. The pedestal was installed on the property on August 18, 1978, according to ALLTEL's records. Exhibit 9 is a summary of ALLTEL's costs to move the pedestal. The costs associated with moving the pedestal include: surveying the site, developing the solution, looking at the contractor expenses, digging up the cable, relocating the cable, splicing the cables back together, hooking the service back up to the residences and then posting it in their property record system after the work was completed. He testified that the cost estimate he developed did not include any profit for ALLTEL. Mr. Schroeder testified that typical practice is to work with the landowner prior to installing telephone pedestals. There is no set standard; rather, pedestal placement in the right-of-way depends on engineering judgment for each particular situation. He believes that the pedestal was installed consistent with best engineering practices at the time. Finally, Mr. Schroeder stated that he had heard that during construction of the pedestal, an ALLTEL service vehicle dropped a wheel while turning into the driveway.

#### O P I N I O N     A N D     F I N D I N G S

Upon consideration of the testimony and submissions produced in this matter and being duly advised in the premises, the Commission finds that the Complaint should be dismissed and the requested relief denied. From the admissions contained in the Complaint and the testimony given at the hearing, we conclude that the pedestal is in all likelihood located in the public right-of-way. Neb. Rev. Stat. § 86-704(1)(2002 Supp.) states that "any telecommunications company incorporated . . . in this state, is granted the right to construct, operate, and maintain telecommunications lines and related facilities along, upon, across, and under the public highways of this state." It appears that the statute cited would give ALLTEL the general ability to locate its pedestals in the public rights-of-way subject to certain exceptions which were not made applicable in this case. No evidence was filed as to whether the Complainant applied for or received permission from any local regulatory body prior to widening his driveway.

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<sup>1</sup> Exhibits 2 through 9.

The next issue then becomes whether the relocation of a pedestal should be charged to the telecommunications carrier or the landowner. In these particular circumstances, we find that the widening of the Complainant's driveway constitutes a business convenience for the landowner. The present landowner testified that his farming operations required the use of larger vehicles turning into and out of his driveway when compared to the previous landowner. Although no incidents have occurred proving the turn into the driveway to be hazardous, the landowner began to widen the driveway to prevent any future occurrence. After completion of the landowner's proposed project, the pedestal would not be in conflict with the driveway itself, but would be partially covered by dirt because of the proposed grading, which slopes into the ditch. We find it would be contrary to public policy in this instance to charge the general ratepayers for the relocation of one landowner's pedestal absent evidence of negligent placement or a demonstration that the placement of the pedestal was inconsistent with general engineering and construction standards.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the relief requested by the Complainant be and it is hereby, denied.

IT IS FURTHER ORDERED that the above captioned matter be, and it is hereby, dismissed.

MADE AND ENTERED at Lincoln, Nebraska, this 22nd day of January, 2003.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director